



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,669	07/28/2003	Keith L. Henk	N322.12-0001	7118

164 7590 05/13/2005

KINNEY & LANGE, P.A.
THE KINNEY & LANGE BUILDING
312 SOUTH THIRD STREET
MINNEAPOLIS, MN 55415-1002

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
----------	--------------

3634

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/628,669	Applicant(s) HENK, KEITH L.	
	Examiner Jennifer E. Novosad	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003 and 29 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 8, 15, 17-28, 35, 36, 40 and 46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-14, 16, 29-34, 37-39, 41-45, 47 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/28/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restriction

Applicant's election without traverse of species (a) and sub-species (i), i.e., Figures 1A-1C, 2A, 3-8, and 9A, respectively, in the replies filed on January 25, 2005 and March 29, 2005, is acknowledged. *Accordingly*, claims 8, 15, 17-28, 35-36, 40, and 46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no *allowable* generic or linking claim. It is noted that currently, claims 1 and 4 are deemed to be generic, to all species.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 6, 13, 29, 32, 37, 38, and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "lower" in claims 1, 4, 29, and 37 is a relative term which renders the claims indefinite. The term "lower" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Art Unit: 3634

The use of the phrase "may be" in claims 6, 13, 38, and 43 renders the claims indefinite since what "may be" to one, "may not be" to another. Thus, the metes and bounds of the claims cannot be properly ascertained since one would not know whether the claims are positively requiring that the elements be "adjusted".

Claim 32 recites the limitation "the portion" in lines 3 and 6. There is insufficient antecedent basis for this limitation in the claim. It is suggested that "the" be changed to --a--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9-14, 16, and 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,800,958 (Dorn '958).

Dorn '958 discloses a holding device comprising a first vertical element upright (18 - on left side of Figure 2) formed from a first rod and forming a first vertical plane (see Figure 3) defined by a plurality, i.e., at least three, corner portions, wherein at least one of the corner portions is a lower (at 20) rear portion, taken relative to the top of the device; a first horizontal extension (20) element formed from a portion of the first rod and extending from the lower rear portion, perpendicularly to the first vertical plane (see bottom middle of Figure 3); the first vertical element is triangular (see Figure 1); *with respect to claims 3 and 11*, the first vertical element having a first frictional surface secured thereto (unnumbered - rubber cap, similar to 13

Art Unit: 3634

at end of the element, shown in dashed lines in Figure 2) and the first horizontal extension element (20) having a second frictional surface secured thereto (unnumbered - rubber cap, similar to 13 at end of the element, shown in solid lines in top middle portion of Figure 2); *with respect to claims 2, 4 and 10*, the device further comprising a second vertical element upright (18 - on right side of Figure 2) similar in design and shape to the first element that is triangular and parallel thereto; *with respect to claims 5 and 12*, the first horizontal extension element (20) and the second horizontal extension element are slidably connected (through 16 and 21) such that the elements (20) are capable of sliding in both a converging motion (solid lines in Figure 3) and a diverging motion (dashed lines in Figure 3) for adjusting the distance therebetween; *with respect to claims 6 and 13*, a first end stop (21) secured to the first element (20) and slidably (i.e., the end of 21 is wrapped over 20 and is considered to be slidable therealong) connected to the second element (20) and a second stop (21) secured to the second element (20) and slidably connected to the first element (20) wherein the first and second stop (21) provide a minimum and a maximum limit for the distance between the elements; *with respect to claims 9, 16, and 30*, the first and second stops (20) comprise frictional means (i.e., a spring constitutes frictional means) for providing frictional resistance to the horizontal elements (20); *with respect to claims 7 and 14*, the stops are considered to define guide bushings; and *with respect to claim 29*, a horizontal support (21) connected to the lower rear portion (20) of the uprights wherein the uprights are separated by a distance determined in part by a length of the support (see Figure 3).

Claims 1, 4-7, 29, 31, 32, and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 934,148 (Duff '148).

Art Unit: 3634

Duff '148 a holding device comprising a first vertical element upright (on left side of Figure 1) formed from a first rod (generally at D) and forming a first vertical plane defined by a plurality, i.e., at least three, corner portions, wherein at least one of the corner portions is a lower (between B¹ and D¹) rear portion, taken relative to the top of the device; a first horizontal extension (B) element formed from a portion of the first rod and extending from the lower rear portion, perpendicularly to the first vertical plane; *with respect to claim 4*, the device further comprising a second vertical element upright (on right side of Figure 1) similar in design and shape to the first element and parallel thereto; *with respect to claim 5*, the first horizontal extension element (B) and the second horizontal extension element (B¹) are slidably connected (through C - see Figure 2) such that the elements (B and B¹) are capable of sliding in both a converging motion and a diverging motion for adjusting the distance therebetween; *with respect to claim 6*, a first end stop (C) secured to the first element (B) and slidably connected to the second element (B¹) and a second stop (C¹) secured to the second element (B¹) and slidably connected to the first element (B) wherein the first and second stop (C and C¹) provide a minimum and a maximum limit for the distance between the elements; *with respect to claims 7, 39, and 45*, the stops are considered to define guide bushings; *with respect to claims 29 and 37*, a horizontal support (B and B¹) connected to the lower rear portion (between B¹ and D¹) of the uprights wherein the uprights are separated by a distance determined in part by a length of the support (i.e., the distance is adjustable - see lines 15-17); *with respect to claim 32*, the support (B and B¹) comprising a first shaft (B) connected to the lower rear portion of the first upright and a second shaft (B¹) connected to the lower rear portion of the second upright whereby the shafts (B

Art Unit: 3634

and B¹) are slidable (through C and C¹); *with respect to claims 38 and 44*, a stop (C and C¹) are secured to the shafts (B and B¹);

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 30, 33, 34, 41-45, 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duff '148, alone.

Duff '148 discloses the device as advanced above.

The claims differ from Duff '148 in requiring: (a) the stops to comprise frictional means for providing guided frictional resistance (claims 9, 34, 41, and 47); (b) the uprights to comprise a frictional surface (claims 30, 33, 42, and 48); and (c) the first upright and the first shaft to be formed from a *first single formed rod* and second upright and the second shaft to be formed from a *second single formed rod* (claim 43).

With respect to (a) and (b), although Duff '148 is silent as to the material from which the stops (C) and uprights (D) are made, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the stops and uprights from a rubber material, thereby defining a frictional means, and allowing for increased securement and stability of the device when in use.

Art Unit: 3634

With respect to (c), although Duff '148 does not explicitly state or show that the upright and respective shaft is formed from a single formed rod, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the first upright and the first shaft are considered to be formed from a *first single formed rod* and second upright and the second shaft are considered to be formed from a *second single formed rod*, since when taken apart the first shaft would be connected to the first upright, thereby allowing for ease in assembly.

Conclusion

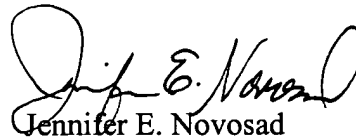
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 3634

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Jennifer E. Novosad". The signature is fluid and cursive, with the first name "Jennifer" and last name "Novosad" clearly legible.

Jennifer E. Novosad
Patent Examiner
Art Unit 3634

Jennifer E. Novosad/jen
May 10, 2005